IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1671 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRA M BRAHMBHATT

Versus

AMBICA TRADING COMPANY

Appearance:

1. Special Civil Application No. 1671 of 1994

MR MC BHATT for Petitioner No. 1

MR MM DALAL for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 26/02/2002

ORAL JUDGEMENT

Rajendra Mahendrabhai Brahmbhatt-petitioner has filed this petition challenging the order dated 10.19.1993 passed by the Motor Accident Claims Tribunal

No. 4 (Main), Ahmedabad, in Motor Accident Claims Petition No. 69 of 1986 below Applications Exh. 13 as well as 41. The Tribunal by its impugned order held that the claimants cannot be permitted to introduce new facts by recalling himself to depose again on the ground of facts of the accident and thereby the Tribunal was pleased to reject application Exh. 41 to recall the claimant to adduce new evidence on record.

2. The facts giving rise to this petition are as under:

2.1 The petitioner suffered serious injuries in the vehicular accident which occurred on 26.9.1985. The petitioner therefore filed Motor Accident Claim Petition being No. 69 of 1986 before the Motor Accident Claims Tribunal No. 4 (Main), Ahmedabad and prayed for compensation for various injuries suffered by him. The petitioner filed the said application against Ambica Trading Company Limited - owner of the motor car No. GJM-7591 which has dashed the petitioner and he has received injuries. A copy of the said application has been annexed at Annexure-A to this petition. It has been stated in the said application that on Ashram Road, near Income Tax there is a circle near Gujarat Vidyapith. On the day of the accident the petitioner was driving scooter No. GTV 5881 and on the pillion seat of the scooter one Vinodbhai Chimanlal Mehta was sitting as a pillion rider. When the scooter was passing through Gujarat Vidyapith, motor car of opponent dashed and that is how the applicant-petitioner received injuries in this behalf. The petitioner filed claim petition claiming compensation of Rs. 1 lakh for the injuries sustained by him in the accident. It appears that originally Ambica Trading Company joined as opponent No. 1. However, subsequently Oriental Fire and General Insurance Company Limited was also joined as opponent No. 2.

2.2 Before the trial court the Insurance Company filed written statement and denied the entire case of the accident. It is stated that the insurance policy is not traceable at their end and therefore applicant-petitioner has not taken insurance police. The said written statement was filed by the Insurance Company at Exh. 12(b)

2.3 It appears that in these proceedings the applicant-petitioner produced xerox copy of the insurance policy. Thereafter, the owner of the motor car addressed a letter dated 24.7.1986 to the Insurance Company in this behalf. The Insurance Company by its letter dated

25.7.1986 replied to the said letter. The Insurance Company has stated that as summons of the aforesaid case has been served on the Insurance Company, it has directed opponent No. 1 to contact its advocate Mr. R.R. Panchal. The said letter has been produced at page 24 of the present petition.

2.4 However, the applicant has filed application dated 8.8.1988 being Exh. 13 in which the applicant-petitioner stated that the applicant has already addressed a letter to the Insurance Company. The applicant has already served summons of this case on the Insurance Company and Insurance Company has also filed its reply. However, it was stated that the Insurance Company had issued policy for the period 7.4.1985 to 6.4.1986. The owner had addressed a letter dated 24.7.1986 to the Insurance Company for obtaining survey of the said car in this behalf. The Insurance Company has given its reply on 25.7.1986. In the said application the applicant stated that the Insurance Company may be directed to produce policy copy as well as copies of the letters which have been referred to earlier. Thereafter, again the applicant-petitioner has filed an application dated 10.12.1993 and stated that the applicant-petitioner filed an application dated 8.8.1988 Exh. 13 in which the Insurance Company has stated that they will file reply and they have still not filed reply. In view of the same, the applicant may be recalled to examine him and to produce further oral evidence to prove the fact of accident.

2.5 It appears that the learned Judge by his order dated 10.12.1993 was pleased to reject the said application.

2.6 Being aggrieved and dissatisfied with the aforesaid order the petitioner has filed this Special Civil Application before this court. Mr. M.C. Bhatt, learned advocate for the petitioner has made the following submissions:

2.7 It is submitted that the learned Tribunal was erred in not passing any specific order below application Exh. 13 though the order is apparently passed by which application Exh. 13 stands disposed of. It was further submitted the Tribunal has passed order which is not in consonance with the principles required to be followed by the Tribunal i.e. the principle of natural justice, equity and good conscience. It was further submitted that in the interest of justice both the Tribunal ought to have allowed both the applications Exh. 13 and Exh.

41. It was further submitted that the Tribunal has clearly erred in passing the order particularly when there is no written objection by the Insurance Company in this behalf. It was further submitted that with a view to do substantial justice as expeditiously as possible and the role of the Tribunal is not passive, the Tribunal is expected to play some active role and also take initiative to render justice between the parties.

3. I have considered the submissions of the learned counsel for the petitioner in this behalf. I have been informed that as far as the owner is concerned, the owner has filed affidavit in reply dated 16.3.1994. It was stated in the affidavit that opponent No. 2 Insurance Company has not produced the facts though they were in possession of the necessary papers and opponent No. 1 had never been called upon before the Tribunal to proceed with the case as per the oral talk of Mr. R.R. Panchal, learned advocate of the Insurance Company. It was further stated that important papers claimed by the claimant ought to have been produced by Mr. R.R. Panchal, learned advocate for the Insurance Company but he has not done so and as such the Insurance Company which knows the facts of the subject matter and who is in constant touch with their advocate has not cared to scrutinise the papers, otherwise the Tribunal would not have passed the said order. Opponent No. 1 has supported the case of the applicant-petitioner in this behalf.

4. Mr. Harish Bhatt, learned advocate, appeared on behalf of respondent No. 2 Insurance Company. He has not seriously contested the petition in this behalf.

5. I have considered the facts and circumstances of the case and also the contention raised by the learned advocate for the petitioner. In my view the prayer of the petitioner for calling upon those documents namely letter dated 24.7.1986 addressed to the Insurance Company and the letter dated 25.7.1986 addressed by the Insurance Company to opponent No. 1 are correct and genuine. I have considered the submission of the Insurance Company also. The claimant is entitled to be recalled as witness and be allowed to produce two letters as well as the Insurance Policy in this behalf as the same is in the interest of all parties and to give substantial justice the application ought to have been allowed.

6. In the result, the petition is allowed. The order dated 10.12.1993 passed by the learned judge, Motor Accident Claims Tribunal No. 4 (Main), Ahmedabad is quashed and set aside. Rule is made absolute. No order

as to costs.

(K.M. MEHTA, J)
(pkn)